



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
MONTANA STATE OFFICE
222 NORTH 32ND STREET
P.O. BOX 36800
BILLINGS, MONTANA 59107-6800



IN REPLY TO:

MTM 15647A
MTM 15651B
SDR 922-90-09
3165 (922.LB)

July 30, 1990

CERTIFIED--RETURN RECEIPT REQUESTED

DECISION

Mr. R. W. Bradford)
Freeport-McMoRan Oil and Gas Company)
P.O. Box 60004)
New Orleans, Louisiana 70160)

SDR No. 922-90-09

Violation Affirmed
Assessment Reversed

Freeport McMoRan Oil and Gas Company (Freeport) requested a State Director Review (SDR) (Enclosure 1) of two assessments issued to Freeport by the Great Falls Resource Area Office (GFRA). The assessments were issued to Freeport for failure to comply with the access provisions of the Application for Permit to Drill (APD). Freeport was notified of the violation and assessment by two letters (a separate letter for each lease) dated June 13, 1990 (Enclosures 2 and 3).

The letters informed Freeport that an inspection of Freeport's drilling activities on June 6, 1990, found that Freeport failed to follow the access route approved in the APD. The two violations occurred on federal lease MTM 15647A, well No. 0732-3, located in the NW¼SE¼SE¼, sec. 7, T. 33 N., R. 32 E., and federal lease MTM 15651B, well No. 2042-2, located in the NW¼SE¼SE¼, sec. 20, T. 34 N., R. 32 E., Phillips County, Montana.

Freeport feels that the assessments are excessive and have been levied in a manner contrary to the provisions of Title 43 CFR 3163.1. Because the violations in the two cases were the same, Freeport stated the following arguments in favor of revocation or reduction of the assessments for both cases together:

1. In both cases, the existing trail (approved access route in the APD) was followed most of the route. The trail was only diverged from, in favor of the proposed pipeline right-of-way, when the pipeline right-of-way offered a clearly more direct (and less disturbing to the surface) route.
2. It is common practice to use the pipeline right-of-way as an access route in order to avoid making an otherwise unnecessary second disturbance.

3. Although pipeline applications have not yet been filed, Freeport does plan to lay a line to each of the wells. Therefore, a disturbance will occur later anyway in the areas over which Freeport's trucks drove. These areas will be restored and re-seeded after installation of the pipelines.

4. In both cases, only one or two loads went down the pipeline route. In the case of the 0732-3 well, one set of tracks in and out of the location using that route was made by someone with Cottonwood Grazing (a surface lessee).

5. In neither case was Freeport given, as is required by the provisions of Title 43 CFR 3163.1, notification in writing of the violation with a reasonable period for abatement. These regulations provide that it is only after the lessee has failed to abate the violation within the time allowed that the authorized officer (AO) may subject the lessee to an assessment.

6. Additionally, in accordance with Title 43 CFR 3163.1, where noncompliance involves a minor violation, and where the lessee fails to abate the violation within the time allowed (again, no such time was allowed), the maximum penalty to which the authorized officer may subject the lessee is \$250.00. Thus, in each of the above cases, Freeport received the maximum penalty. Freeport believes that, given the facts, assessment of the maximum penalty is inappropriate in these two cases.

The access route used by Freeport was not in the approved APD and has not been approved under the right-of-way application by the AO. If Freeport felt the access route proposed in the pipeline right-of-way offered a more direct (and less disturbing to the surface) route, Freeport should have requested approval from the AO to use the proposed route in accordance with 43 CFR 3162.3-1(e). The terms and conditions of an approved permit, or drilling plan, shall not be altered unless BLM first has approved an amended or supplemental permit and/or plan covering any such modifications.

Based on the incident the CFRA was correct in notifying Freeport of the violation, however, Freeport was not given an abatement period to correct the violation. Also, the immediate assessment issued by the CFRA to Freeport for failure to comply with the provisions of the APD is incorrect.

Immediate assessments, in accordance with 43 CFR 3163.1(b), only apply to the following three major violations:

1. Drilling a well without a blowout preventer or other related well control equipment (43 CFR 3163.1(b)(1) and Onshore Order No. 2, Section III, A.1.).

2. Drilling a well without an approved APD (43 CFR 3163.1(b)(2)).

3. Plugging a well without prior approval of the AO (43 CFR 3163.1(b)(3)).

Therefore, the violation is upheld, however, Freeport is not subject to the \$250 assessment assessed by the GFRA for each lease. The GFRA is instructed to give Freeport a reasonable abatement period to correct the violations.

Sincerely,



Thomas P. Lonnie
Deputy State Director
Division of Mineral Resources

4 Enclosures

- 1-SDR dated July 15, 1990 (5 pp)
- 2-GFRA assessment notification letter for MTM 15647A (2 pp)
- 3-GFRA assessment notification letter for MTM 15651B (1 p)
- 4-Form 1842-1 (1 p)

cc: (w/o encls.)
DM, Lewistown
AM, Great Falls